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Hearing Date: June 14, 2022  
Time: 2:30 p.m. (EDT)

-and-

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*Counsel for The Conservation Fund*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

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In re: :  
: Chapter 11  
Virginia True Corporation, :  
: Case No. 19-42769 (nhl)  
: Re Docket No.: 325 and 326  
Debtor. :  
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**THE CONSERVATION FUND'S RESERVATION OF RIGHTS WITH RESPECT TO (I)  
DEBTOR'S MOTION FOR AN ORDER ESTABLISHING BIDDING AND NOTICING  
PROCEDURES, AND SETTING DATES, IN CONNECTION WITH THE DEBTOR'S  
SALE OF ITS REAL PROPERTY AND GRANTING RELATED RELIEF, AND (II)  
APPLICATION FOR AUTHORITY TO RETAIN AND EMPLOY AUCTION  
ADVISORS AS AUCTIONEER WITH RESPECT TO THE SALE OF  
DEBTOR'S REAL PROPERTY**

The Conservation Fund submits this Reservation of Rights with respect to (I) *Debtor's Motion for an Order Establishing Bidding and Noticing Procedures, and Setting Dates, In*

*Connection with the Debtor’s Sale of its Real Property and Granting Related Relief* [Docket No. 325] (the “Bid Procedures Motion”), and (II) *Application for Authority to Retain and Employ Auction Advisors as Auctioneer with respect to The Sale of Debtor’s Real Property* [Docket No. 326] (the “Auction Advisors Application”)<sup>1</sup>, and respectfully states as follows:

1. The Conservation Fund supports the Debtor’s sale process and wishes to participate in the Debtor’s sale process by submitting a bid prior to, and participating in, any auction that is scheduled. However, The Conservation Fund is concerned that the proposed bidding procedures and Auction Advisors Application, if approved without modification, may confer unfair advantages on the stalking horse that should not be approved, including the following.
2. The proposed bidding procedures require that a bid take the form of the Purchase and Sale Agreement, or PSA, attached to the Bid Procedures Motion as Exhibit B. The PSA provides a representation by purchaser that “Purchaser examined the property in connection with pre-contract due diligence.” *See* Bid Procedures Motion, Ex. B, PSA § 6.1. The PSA also includes an acknowledgement by Purchaser that it has had “the opportunity to inspect the Property and its operation,” that the Purchaser is purchasing the Property pursuant to Purchaser’s independent examination, study, inspection and knowledge of the Property,” and that “Purchaser is relying upon its own determination of the value and condition of the Property and not on any information provided or to be provided by the Seller.” *See* Bid Procedures Motion, Ex. B, PSA § 7.5.

3. As such, the bidding procedures should make clear, or the Debtor should otherwise represent to this Court, that interested parties wishing to submit a bid shall be provided reasonable access to the property prior to the bid deadline. Absent such opportunity, it would be impossible for any interested party to submit a “Competing Offer” that is consistent with the terms and

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Bid Procedures Motion and the Auction Advisors Application.

conditions proposed by the bidding procedures, namely that the Competing Offer “be on substantially the same terms and conditions of the PSA” and shall “not be conditioned upon the outcome of unperformed due diligence by the Competing Offeror.” *See* Bid Procedures Motion at ¶ 9.

4. In addition, the Agreement between the Debtor and Auction Advisors provides that Auction Advisors “has agreed to accept a commission of 5% of the sale price” if an entity other than the [stalking horse] is the successful bidder at Auction. *See* Auction Advisors Application at ¶ 9. However, if the stalking horse is the successful bidder, Auction Advisors agreed to a commission of either “(a) 1% of the sale price if the sale price is \$4,200,000.00 as contemplated under the PSA; or (b) 3% of the sale price if the sale price is higher than \$4,200,000.00.” *See id.* The lower commission for Auction Advisors if the Debtor consummates a sale with the stalking horse could have the effect of creating an uneven playing field between the stalking horse and other bidders when determining which bid is higher or better for the Debtor’s estate. Auction Advisors’ commission should not turn on the identity of the successful bidder.

5. For the reasons set forth herein, The Conservation Fund reserves its rights to raise any objection with respect to the Debtor’s sale process, including but not limited to the proposed bidding procedures, auction, the Debtor’s determination of successful bidder, or any sale to the stalking horse or other purchaser.

*[Remainder of page intentionally left blank]*

Dated: June 7, 2022  
New York, NY

**COOLEY LLP**

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Reservation of Rights* was served by CM/ECF and/or mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by first class mail upon the parties listed below. Parties may access this filing through the Court's CM/ECF System.

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